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SUBJECT: NEW TAX INTERPRETATION SNARES THAKSIN; OTHERS TOO?

REF: A. BANGKOK1813

[B](#). 06BANGKOK788

[1](#)1. (U) On April 2 the government Asset Examination Committee (AEC, a committee set up by the current government to examine alleged cases of corruption committed during the Thaksin regime) ruled that the sale of shares in Shin Corp by former PM Thaksin's children was a taxable event (reftel A). The ruling overturned an April 2006 tax letter by the government Revenue Department (tax office) to the effect that it was not a taxable event because the transaction had occurred via the Stock Exchange of Thailand and Thai law exempts capital gains on trading done on the public bourse.

[1](#)2. (U) The rationale given by the AEC for overturning the previous decision was that the sale of shares by Ample Rich, the offshore company which held the shares for Thaksin's family, sold the shares to Thaksin's children at Bt1/share when the market value was Bt49.25/share. The AEC determined that 1) even though this transaction nominally took place in Singapore, because the share registry for Shin Corp shares is in Thailand, the transaction was deemed to have been "completed" in Thailand. 2) Capital gains taxes are due on the difference between the cost of the Ample Rich share purchase by Thaksin's children and the market value.

[1](#)3. (SBU) Tax and legal experts with whom we have spoken are concerned about various aspects of this decision:  
-There has been no rescission of the April tax letter from the Department of Revenue. Experts now question the value of such letters.

-The registry for shares in all Thai companies exists only in Thailand. Does this mean that offshore transactions between offshore entities could now be deemed to be taxable events in Thailand if they involve trading in Thai shares?

-Most problematic, the AEC has determined that a capital gains event took place when the shares were purchased by the Thaksin children from Ample Rich. The precedent of assigning a capital gain at the time of purchase could be a problem, tax lawyers say, because it could mean that there is a whole new field for government to audit. They ask why the AEC instead did not deem the transaction a case of income and require tax to be paid under the income tax code.

[1](#)4. (SBU) Comment: As reported in reftel B, Thaksin has been shuffling his shares in Shin Corp around the globe from the time he entered politics in order to avoid limits on politicians owning more than 5 percent of a company. The

manner in which he structured the sale of Shin Corp to Temasek was clearly done to limit any tax liability. The problem for the current regime is that Thaksin's tax lawyers were largely successful in this effort. Further, if changes to the Foreign Business Act go through in their current form and foreign companies and/or their nominees are required to sell or swap shares, the value at which these deals are transacted will have to be done with a view of the new rules set by the AEC. The liability of each party in a private transaction has now potentially increased by a significant degree.

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